IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6981 of 1989
AND
SPECIAL CIVIL APPLICATION No.6689 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DABHI GOVINDSINH DAJIBHAI

Versus

GUJARAT PANCHAYAT SERVICE SELECTION BOARD

Appearance:

1. Special Civil Application No. 6981 of 1989
MR SN SHELAT for Petitioner No. 1-2
GOVERNMENT PLEADER for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 26/07/2004

ORAL JUDGEMENT

1. The petitioners, by way of these petitions, have challenged the decision dated 07.09.1989 which is at Annexure `C' in the compilation of Special Civil Application No.6981 of 1989 and also sought the directions against the respondent-Board to continue and operate the select list till the new select list is prepared.

2.1 The petitioners have strongly placed reliance on the judgment of this Court in Special Civil Application No.2944 of 1986 and allied matters dated 14.10.1987, pursuant to which on 04.10.1990, this Court has passed the reasoned order which reads as under :

"In all these three petitions, rule has been issued and the matters have been admitted. Today, they have been placed for interim relief. So far as interim relief is concerned in Special Civil Application No.2527 of 1990 interim relief as prayed by the petitioner in terms of para 27(D). Almost identical reliefs have been prayed in the remaining two petitions. It is the case of the petitioners that pursuant to the circular Annexure-B to the petition (Special Civil Application No.2527 of 1990) dt.May 29, 1982, that the list is prepared wherein the petitioner of that petition was selected and placed in select/waiting list. Para 3 of the said circular dt.May 29,1982 is relevant and it provides that after careful consideration the Government had decided that any select/waiting list prepared by the Gujarat Panchayat Service Selection Board and the District Panchayat Committee will remain in force till the result of the next examination is declared. By another resolution dt.June 12,1989 this circular dt.May 29, 1982 is repealed and in clause 6 it is provided that the select/waiting list will remain in force either till the result of the next examination is declared or for a period of one year whichever is earlier.

Obviously, in view of the fact that the second circular is of June 1989, according to the principle of interpretation of statutes it would not have been given retrospective effect. Therefore, even though it may be argued that one circular can be repealed or cancelled or modified by a subsequent circular then also since no retrospective effect is given, obviously selection which has been made earlier pursuant to the resolution of 1982 will remain in force

and if the said period is curtailed by fixing a limit of one year it would be applicable only after June 1989.

Again, so far as the merits of the matter are concerned, rule has been issued. Therefore, prima-facie the court was satisfied about the case of the petitioners. In these circumstances, interim relief is required to be granted. Therefore, interim relief is granted that the list prepared in pursuance of the resolution dt.May 29,1982 will remain in force till next select/waiting list is prepared pursuant to the said circular and it will not lapse.

Mr.Champaneri, the learned AGP for the respondents requests that the operation of this order may be stayed so as to enable the respondent to approach the higher forum. I think that the request is reasonable and the operation of the order is stayed upto 12.10.1990."

2.2 These matters were ordered to be heard with Special Civil Application No.2527 of 1990 which came to be allowed by judgment and order dated 17.03.1992, relevant observations are as under :

"2. When the advertisement was given, there were no statutory rules governing the recruitment of the aforesaid cadre. By the time the list came to be prepared, the Government had come out with the rules known as the Clerks (Gujarat Panchayats Services) Recruitment Competitive Examination Rules, 1983 (hereafter referred to as the 1983 Rules). As per rule 19 of these rules of 1983, life of the select list is provided for and accordingly it shall continue to be operative till the new list is prepared and published. Prior thereto by administrative instructions contained in Circular dated 29th May 1982, Annexure "B", list was to continue till the results of the competitive examinations were declared. Statutory rules have made it more specific and is definitely related to not only the preparation of the list but its publication.

3. After the list was so finalized, respondent no.2 had proceeded to fill in only 18 posts the list being for 90 candidates, there is balance of about 72 candidates some of them have come before this Court. The directions for preparing the

select list are contained in Government Resolution dated 12.6.1989 copy of which is produced at page 38 onward alongwith the affidavit-in-reply filed on behalf of the respondent no.2.

4. The aforesaid particulars about the preparation of the list and previous position confirmed by the rules and the circular have come out from the affidavit-in-reply.

5. The question therefore is whether the administrative action or instructions in the form of Government Resolution would prevail over the statutory rules. The obvious answer is in the negative. Had this been the position, this order would have been completed by now. In the advertisement annexure "A", we find that respondent no.1 had come out with details as to the said total number of 56 posts, 37 are said to be of general category and four for scheduled caste, 8 for scheduled tribe, 5 for others, and two for handicapped. That is how total of 56 is made out.

6. The grievance in some of the petitions is that respondent no.2 has not cared to comply with its own decision of filling up posts in keeping with the number of posts.

7. It is too obvious that when the list is prepared and this being the first recruitment not only viz-viz the candidate but initial point of cadre in the panchayat services itself, the aforesaid different categories will have to be filled in at the first available opportunity from amongst candidates of that category.

8. With regard to the reservations policy of the State Government prescribing percentage with reference to the numbers of scheduled caste and scheduled tribe for the district with which we are dealing with namely Junagadh District, we have at Annexure `D' in Special Civil Application No.2101 of 1990 a Government decision in that regard. 9% seems to be the reservation prescribed for the scheduled caste candidates and 1% for candidate belonging to scheduled tribe. Obviously, respondent no.2 will have to comply with this and while doing this, necessarily it has to go strictly by the selection list which

has been prepared since the year 1984.

9. It has been pointed out on behalf of the petitioners that all the 18 posts that have been filled in so far, have been filled in from the general category only and therefore, pursuant to this order, as and when candidates are recruited out of the aforesaid select list, obviously, respondent no.2 will have to adjust the earlier recruitment of 18 candidates of general cadre so as to comply with the said directions of the roster.

10. Accordingly, the petitions are allowed. The select list prepared in the year 1984 is very much subsisting and particularly respondent no.2 is directed to fill up the vacancy from the impugned select list as and when the vacancies are to be filled in for the post of account clerk and the said list shall remain operative till the fresh list is prepared and published in accordance with the rules. Looking to the fact that as per the advertisement, there were 56 posts from which only 16 are filled in, the posts are lying vacant since long. Moreover, as per Annexure `D' in Special Civil Application No.2527 of 1990, there is indication of further recruitment of 17 posts. By this judgment, when the said administrative directions are held to be invalid and not binding to respondent no.2, it is expected that they shall proceed to fill up these vacancies as early as possible. Rule made absolute to the above extent in these petitions. D.S.Permitted."

3.1 In that view of the matter, these petitions are required to be allowed and the same are allowed. The select list prepared in the year 1984 is very much subsisting and particularly respondent no.2 is directed to fill up the vacancy from the impugned select list as and when the vacancies are to be filled in for the post of account clerk and the said list shall remain operative till the fresh list is prepared and published in accordance with the rules. Looking to the fact that as per the advertisement, there were 56 posts from which only 16 are filled in, the posts are lying vacant since long. Moreover, as per Annexure `D' in Special Civil Application No.2527 of 1990, there is indication of further recruitment of 17 posts. By this judgment, when the said administrative directions are held to be invalid and not binding to respondent no.2, it is expected that

they shall proceed to fill up these vacancies as early as possible. Rule made absolute to the above extent in these petitions with no order as to cost. D.S.Permitted.

(K.S.Jhaveri, J)

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